



**DECISION AND ORDER ON MOTION TO
REVIEW AND VARY THE OEB PHASE 2
DECISION IN EB-2018-0336**

**EPCOR NATURAL GAS LP MOTION
EB-2019-0276**

BEFORE: Emad Elsayed
Presiding Member

Cathy Spoel
Member

Susan Frank
Member

March 5, 2020

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1 INTRODUCTION AND SUMMARY

EPCOR Natural Gas Limited Partnership (EPCOR Natural Gas) is a privately owned utility regulated by the Ontario Energy Board (OEB) that sells and distributes natural gas in southwestern Ontario. EPCOR Natural Gas serves over 9,000 customers in Aylmer and surrounding areas. In November 2017, EPCOR Natural Gas purchased the entire natural gas distribution system from the predecessor distributor, Natural Resource Gas Limited (NRG).

In February 2019, EPCOR Natural Gas filed a cost of service application seeking approval to charge new rates for the sale and distribution of gas effective January 1, 2020 and approval of an incentive rate-setting plan for the period January 1, 2021 to December 31, 2024.¹ A settlement was reached on all issues among the parties. The OEB in its Decision and Interim Rate Order dated July 4, 2019, accepted the settlement proposal and determined that the cost of four system integrity projects completed by NRG in 2016 and 2017 (an issue that was deferred in the settlement proposal) would be addressed in Phase 2 of the proceeding.²

The four system integrity projects were the Bradley Station project, the Bradley to Wilson pipeline project, the Putnam to Culloden pipeline project, and the Springwater pipeline project. In its Phase 2 decision issued on October 24, 2019 (Decision), the OEB approved the inclusion of the Bradley Station project and Bradley to Wilson pipeline in the 2020 rate base. While the OEB approved the inclusion of the Springwater pipeline project in rate base for the rate year following the transition to a fully market-based supply of gas (expected to be January 2021), the Putnam to Culloden pipeline project (Project) was disallowed.

The OEB in its Decision noted that it was not persuaded that the Project had a material impact on the system integrity issue. The OEB maintained that it was not persuaded that a robust capital planning and prioritization process was used to arrive at the most appropriate solution for ratepayers. The net book value of the Project was therefore excluded from the 2020 rate base. Whether this was a permanent exclusion from rate base was to be determined in the next cost of service rate application on a prospective basis according to the OEB. EPCOR Natural Gas was provided an opportunity to present evidence as part of its next cost of service rate application (for 2025 rates) to justify the overall usefulness of the Project, and the benefit to the system and ratepayers.

¹ EB-2018-0336

² *ibid*

On December 4, 2019, EPCOR Natural Gas filed a Notice of Motion to Review and Vary the OEB's Decision (Motion). EPCOR Natural Gas also filed an affidavit of Mr. Brian Lippold, the general manager of EPCOR Natural Gas in support of the Motion (Lippold Affidavit), which provided critical additional information to justify the construction of the Project. Mr. Lippold was on an extended medical leave and was not able to provide the information in the rates proceeding.³

The OEB in Procedural Order (PO) No. 1, issued on December 17, 2019, determined that it would dispense with the threshold question and hear the Motion on its merits.

In its Notice of Motion, EPCOR Natural Gas claimed that the OEB committed errors which raise doubts as to the correctness of its decision. EPCOR Natural Gas submitted that the record in the rates proceeding clearly demonstrated that the Project was required.

The OEB finds that the Lippold Affidavit meets the new evidence test; however, there was no error of fact in the OEB's Decision. Based on the new evidence provided in this Motion, the OEB finds that the Project was prudent and that its net book value of \$498,922 shall be included in EPCOR Natural Gas' rate base as of January 1, 2020.

³ EB-2018-0336

2 THE PROCESS

On December 4, 2019, EPCOR Natural Gas filed a Notice of Motion to Review and Vary the OEB's Decision in the EB-2018-0336 proceeding (Motion), in accordance with Rules 40 and 42 of the OEB's *Rules of Practice and Procedure*. EPCOR Natural Gas brought forward the Motion to repeal the OEB's Decision to disallow the cost of the Project in its 2020 rate base.

EPCOR Natural Gas filed the Motion on the following basis:

- a) facts that were not previously placed in evidence in the proceeding and could not have been discovered by reasonable diligence at the time are now available to EPCOR Natural Gas and should be considered by the OEB, and
- b) the OEB committed errors of fact that raise doubts as to the correctness of the Decision.

In support of the Motion, EPCOR Natural Gas filed the Lippold Affidavit. Mr. Lippold provided critical additional information in the affidavit that was not previously available to the company, regarding the manner and extent to which the Project had a material impact on system integrity issues. Mr. Lippold was on an extended medical leave and was not able to provide information in support of the rates application during the proceeding.⁴

In PO No. 1, issued on December 17, 2019, the OEB decided that it would dispense with the threshold question and hear the Motion on its merits. The OEB also granted intervenor status to all intervenors in the EB-2018-0336 proceeding.

PO No 1 also allowed for interrogatories on the affidavit evidence, and provided for final arguments on the Motion. OEB staff and VECC filed final arguments on February 10, 2020. EPCOR Natural Gas filed its reply on February 24, 2020.

⁴ EB-2018-0336

3 POSITION OF PARTIES

Notice of Motion and the Lippold Affidavit

In its Notice of Motion, EPCOR Natural Gas claimed that the OEB had erroneously found that the utility had provided insufficient information on how NRG prioritized system integrity spending for the distribution system and the criteria that it used for such prioritization. EPCOR Natural Gas submitted that the record in the proceeding indicated that NRG had appropriately considered pipeline route options in order to address low-pressure issues in the northeast area of the distribution system near Brownsville.

The Lippold Affidavit in the Motion provided additional evidence to justify the construction of the Project. The evidence detailed the system pressure issues in the northeast area and described the efforts of operations personnel to physically attend to controlling and monitoring system pressure in challenging circumstances. The evidence further described all the options that were considered by NRG to bring additional supplies from Union Gas Limited (now Enbridge Gas Inc.) and alleviate system pressure issues in the Brownsville area.

Submissions of OEB staff and VECC

OEB staff in its submission recognized that NRG was not a large utility, and did not have a large staff. Mr. Lippold as the general manager of NRG (and later of EPCOR Natural Gas) was the person best placed to understand the rationale for the capital projects. Accordingly, it was not surprising that EPCOR Natural Gas was unable to provide the level of detail in the original application that was provided through the Lippold Affidavit.

OEB staff acknowledged that the Lippold Affidavit did demonstrate the severity of the pressure issues in the northeast area around Brownsville. The evidence showed that operational personnel had to routinely work very long hours in order to monitor system pressures and had to dispatch technicians to adjust pressure in challenging circumstances. In the fall of 2014, NRG experienced system pressure drops in the northeast area near Brownsville, to as low as 5 psi. This pressure drop occurred several times during the cold spell of 2014 and there was a real risk of interrupting customers in the Brownsville area. OEB staff noted that this level of detail was not available in the rates proceeding. VECC in its submission agreed that the Lippold Affidavit validated the low-pressure issues in the northeast area.

After the construction of the Project, EPCOR Natural Gas confirmed that technicians did not need to physically attend to system pressure in the northeast area of the system

and the pressure around the Brownsville area did not register pressures below 60 psi at any time during the winter of 2018-2019.⁵

In light of the information presented in the Lippold Affidavit, OEB staff and VECC agreed that there was a real risk of loss of service to customers in the Brownsville area and the Project was required to alleviate system pressure issues. Accordingly, OEB staff and VECC accepted that the Project was a prudent system integrity project and should be included in the 2020 rates.

However, OEB staff argued that the OEB did not err in the Decision by not allowing the Project to be entered into rate base. OEB staff submitted that the OEB made an appropriate determination based on the evidence before it. OEB staff argued that NRG did not have a formal process of prioritizing capital projects and the Project was not recommended by SNC-Lavalin in the system integrity study. EPCOR Natural Gas disagreed with this characterization of the evidence.

Reply Argument of EPCOR Natural Gas

EPCOR Natural Gas submitted that the new information (the Lippold Affidavit) meets the new evidence test and should be fully considered by the OEB. The Lippold Affidavit and the associated interrogatory responses introduced additional and compelling facts that further support the prudence of the Project. Accordingly, EPCOR Natural Gas submitted that the OEB should set aside the Decision and find that the capital cost of \$498,922 associated with the Project was prudently incurred and can be included in the 2020 rate base.

EPCOR Natural Gas opposed OEB staff's suggestion that, should the OEB decide to include the cost of the Project in the 2020 rate base, no correction was required to the final rate order issued in the rates proceeding. OEB staff in its submission noted that the OEB had approved the 2016-2017 System Integrity Capital Deferral Account (SICDA) in the approved Phase 1 settlement proposal. The SICDA specifically deals with the revenue requirement impact of the four system integrity projects. The 2016-2017 period in the description of the deferral account specifically refers to the years during which NRG completed the four system integrity projects that were reviewed in Phase 2 of the rates proceeding. OEB staff suggested that the account could record the 2020 revenue requirement impact of the Project and the balance could be disposed of in the annual rate adjustment. Furthermore, any adjustment to rate base can be reviewed in the next rate application.

⁵ Response to OEB staff IR#1c.

EPCOR Natural Gas submitted that the adjustments should be made in the current proceeding and amounts should be recovered through a rate rider. EPCOR Natural Gas argued that OEB staff's proposed approach added unnecessary complexity to a future incentive rates proceeding that is intended to be mechanistic in nature. The foregone revenue requirement attributable to the Project is approximately \$11,025 including interest for the three-month period ending March 31, 2020. EPCOR Natural Gas proposed that the amount be recovered over a three-month period starting April 1, 2020. The resulting rate rider for a Rate 1 residential customer would be approximately \$0.26 per month, ending June 30, 2020.

EPCOR Natural Gas submitted that its proposed approach would allow for regulatory efficiency, bring the matter to a prompt and fair conclusion for the utility and its ratepayers, and would result in the least amount of administration for the utility and the OEB. According to EPCOR Natural Gas, the proposed rate rider also does not unduly burden EPCOR Natural Gas's ratepayers.

4 FINDINGS

Errors in Fact

The OEB finds that the original OEB panel did consider all of the information available on the record to arrive at its Decision. The OEB agrees with the original panel and other parties (OEB staff and VECC) that the information provided by EPCOR Natural Gas on the record was insufficient to make a definitive determination in relation to this Project.

Therefore, the OEB finds that the original panel did not commit any errors based on the evidence that was before it in arriving at its Decision.

New Evidence

The OEB finds that the Lippold Affidavit provided critical information that was not available to the original panel. Considering that Mr. Lippold was on an extended medical leave, the OEB accepts EPCOR Natural Gas's claim that it did not have access to critical information in the rates proceeding that justified the construction of the Project. The Lippold Affidavit described the extent of, and the risks associated with, the low pressure issues in the northeast quadrant of the gas distribution system and the improvement realized as a result of the Project. The OEB agrees that the Lippold Affidavit constitutes new facts for the purpose of a motion to review. None of the parties opposed this aspect of the Motion.

The OEB finds that, based on the new evidence, the Project was a prudent investment and its cost of \$498,922 shall be included in EPCOR Natural Gas's rate base as of January 1, 2020.

Implementation

The OEB notes that, as part of the Phase 1 settlement proposal accepted by the OEB, EPCOR Natural Gas was granted the 2016-2017 SICDA. The SICDA specifically dealt with the revenue requirement impact of the four system integrity projects. PO No. 1 in the current proceeding stated "Should the decision on the motion require any remedial measures, such as adding the contested project into rate base, these can be implemented (including any retrospective impacts) through the above referenced deferral account."⁶

The OEB finds that there is no need to correct the final rate order for 2020 rates as a result of this Decision and Order. The SICDA can record the 2020 revenue requirement

⁶ PO No. 1, December 17, 2019, p.2

impact of the Project and the resulting balance can be disposed of in the annual rate adjustment.

The OEB does not agree with EPCOR Natural Gas's proposal to adjust the final rate order to reflect rates effective April 1, 2020 including the \$498,922 of rate base associated with the Project. The OEB does not find that another rate change at this point is warranted. EPCOR Natural Gas can file the balances in the SICDA in the next rate proceeding.

5 ORDER

THE ONTARIO ENERGY BOARD ORDERS THAT:

1. The Motion is allowed, and the Phase 2 Decision is varied to include the Putnam to Culloden Pipeline Project into rate base as of January 1, 2020.
2. EPCOR Natural Gas shall record the revenue requirement related to the Putnam to Culloden Pipeline Project as of January 1, 2020 in the 2016-2017 System Integrity Capital Deferral Account.
3. Cost eligible intervenors shall file cost claims with the OEB and forward them to EPCOR Natural Gas on or before **March 16, 2020**.
4. EPCOR Natural Gas shall file with the OEB and forward to the intervenors any objections to the claimed costs by **March 25, 2020**.
5. Intervenors shall file with the OEB and forward to EPCOR Natural Gas any responses to any objections for cost claims by **March 31, 2020**.

All materials filed with the OEB must quote the file number, **EB-2019-0276**, be made in a searchable/unrestricted PDF format and sent electronically through the OEB's web portal at <https://pes.ontarioenergyboard.ca/eservice>. Two paper copies must also be filed at the OEB's address provided below. Filings must clearly state the sender's name, postal address and telephone number, fax number and email address. Parties must use the document naming conventions and document submission standards outlined in the RESS Document Guideline found at <https://www.oeb.ca/industry>. If the web portal is not available parties may email their documents to the address below. Those who do not have computer access are required to file seven paper copies.

All communications should be directed to the attention of the Board Secretary at the address below, and be received no later than 4:45 p.m. on the required date.

With respect to distribution lists for all electronic correspondence and materials related to this proceeding, parties must include the Case Manager, Khalil Viraney at Khalil.Viraney@oeb.ca and OEB Counsel, Michael.Millar at Michael.Millar@oeb.ca.

ADDRESS

Ontario Energy Board
P.O. Box 2319
2300 Yonge Street, 27th Floor
Toronto ON M4P 1E4
Attention: Board Secretary

Email: boardsec@oeb.ca
Tel: 1-888-632-6273 (Toll free)
Fax: 416-440-7656

DATED at Toronto March 5, 2020

ONTARIO ENERGY BOARD

Original Signed By

Christine E. Long
Registrar and Board Secretary